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Dec. Dig. § 442.* 2 Va.-W. Va. Enc. Dig. 391; 14 Va.-W. Va. Enc. Dig. 154; 15 Va.-W. Va. Enc. Dig. 123.]

3. Equity (§ 446*)—Bill of Review—Grounds.—Where, in a suit to enforce a mechanic's lien, the commissioner's report as to the mechanic's and vendors' liens and their priorities was not excepted to, relief against alleged errors therein could not be given on a bill of review, as the priority of such liens might have been affected by extraneous evidence.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1079-1090; Dec. Dig. 446.* 2 Va.-W. Va. Enc. Dig. 391; 14 Va.-W. Va. Enc. Dig. 154; 15 Va.-W. Va. Enc. Dig. 123.]

4. Equity (§ 442*)—Bill of Review—Grounds.—That, in a suit to enforce a mechanic's lien, the lien and the deeds in which the vendors' liens were retained were filed as evidence with the bill did not authorize the correction of the commissioner's report as to the priority of such liens on a bill of review.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1065-1070; Dec. Dig. § 442.* 2 Va.-W. Va. Enc. Dig. 391; 14 Va.-W. Va. Enc. Dig. 154; 15 Va.-W. Va. Enc. Dig. 123.]

Appeal from Circuit Court, Wise County.

Suit by D. J. Phipps against the Wise Hotel Company and others, in which H. H. Dotson filed a bill of review. From a decree granting the relief sought by the bill of review, the original complainant appeals. Reversed, and decree entered, dismissing the case.

Bond & Bruce, of Wise, for appellant.

E. L. Barr and *E. M. Fulton*, of Wise, for appellees.

LEFTWICH et al. v. EARLY.

Sept. 11, 1913.

[79 So. 384.]

1. Evidence (§ 431*)—Delivery of Deed—Parol Evidence.—While parol evidence is inadmissible to prove that a deed perfect on its face was delivered to the grantee on condition, this rule does not control where the question is whether there was such a complete and perfect delivery as to vest in the grantee a perfect and indefeasible title.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1975-1980; Dec. Dig. § 431.* 10 Va.-W. Va. Enc. Dig. 707.]

2. Deeds (§ 66*)—Delivery—Questions for Jury.—Whether there has been such a complete and perfect delivery of a deed to the grantee

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

as to vest in him a perfect and indefeasible title to land, or an interest therein, is a question of fact to be determined by the circumstances of the case, and cannot in the majority of instances be declared as a matter of law.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 127, 633; Dec. Dig. § 66.* 4 Va.-W. Va. Enc. Dig. 406; 14 Va.-W. Va. Enc. Dig. 319; 15 Va.-W. Va. Enc. Dig. 266.]

3. Deeds (§ 54*)—Delivery—Necessity.—Delivery of a deed is essential to its validity.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 116; Dec. Dig. § 54.* 4 Va.-W. Va. Enc. Dig. 403; 14 Va.-W. Va. Enc. Dig. 319; 15 Va.-W. Va. Enc. Dig. 266.]

4. Deeds (§ 56*)—"Delivery"—Acts Constituting.—The fact of delivery of a deed depends on the intention which must be manifested by some express act of the grantor, or by acts, words, or conduct, and the grantor must lose control or dominion over the deed and it must be his intention to pass title at the time and lose control over it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 117-123, 125; Dec. Dig. § 56.* 4 Va.-W. Va. Enc. Dig. 404; 14 Va.-W. Va. Enc. Dig. 319; 15 Va.-W. Va. Enc. Dig. 266.]

For other definitions, see Words and Phrases, vol. 2, pp. 1958-1970; vol. 8, p. 7632.]

5. Lost Instruments (§ 23*)—Evidence of Execution, Loss and Contents—Sufficiency.—In a suit by the heirs of a deceased husband against the wife to petition land originally owned by the wife, an interest in which it was claimed she conveyed to the husband by a deed which had been lost, equity would require strong and convincing proof of the former existence of such title, its loss, and its contents.

[Ed. Note.—For other cases, see Lost Instruments, Cent. Dig. §§ 51-57; Dec. Dig. § 23.* 9 Va.-W. Va. Enc. Dig. 479; 14 Va.-W. Va. Enc. Dig. 668; 15 Va.-W. Va. Enc. Dig. 627.]

6. Deeds (§ 208*)—Delivery—Sufficiency of Evidence.—In a suit by the heirs of a deceased husband against the wife to partition land originally owned by her, evidence held insufficient to show that a deed executed by her for the purpose, as claimed by her, of giving the husband a life estate in case he survived her, had ever been delivered.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 625-632; Dec. Dig. § 208.* 4 Va.-W. Va. Enc. Dig. 406; 14 Va.-W. Va. Enc. Dig. 319; 15 Va.-W. Va. Enc. Dig. 266.]

7. Deeds (§ 58*)—Delivery—Delivery to Third Person.—Where a deed from a wife to a husband which had not been delivered was intrusted by the wife to a third person upon his explanation that he

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

thought he could use it to advantage in a railroad election in counting the vote, this did not constitute a delivery passing title to the husband; since while the deed may be delivered not only to the grantee himself but to a stranger for his use, or declared to be delivered although the grantee be absent, yet, if delivered to a stranger without any declaration or other matter to show that it is for the use of the grantee, it is not a sufficient delivery.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 130-135; Dec. Dig. § 58.* 4 Va.-W. Va. Enc. Dig. 404; 14 Va.-W. Va. Enc. Dig. 319; 15 Va.-W. Va. Enc. Dig. 266.]

Appeal from Circuit Court, Grayson County.

Suit for partition by Celia Leftwich and others against Josephine Early. From a decree dismissing the bill, complainants appeal. Affirmed.

J. S. Bourne and *H. A. Cox*, both of Independence, for appellants.

R. L. Kirby, of Independence, for appellee.

MORGAN *v.* COMMONWEALTH.

Sept. 11, 1913.

[79 So. 388.]

Criminal Law (§ 1014*)—Appeal and Error—Successive Petitions for Writ of Error.—Under Code 1904, § 3466, providing that when the Court of Appeals shall deem the judgment complained of clearly right, and shall reject a petition for a writ of error on that ground, and the order of rejection so states, no other petition shall thereafter be entertained, the court is without jurisdiction to entertain an amended petition for a writ of error to a judgment of conviction for crime, after the original petition had been denied in an order expressly stating that the court was of the opinion that the judgment was clearly right.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 2571; Dec. Dig. § 1014.* 1 Va.-W. Va. Enc. Dig. 503.]

Error to Circuit Court, Wise County.

One Morgan was convicted of malicious shooting, and files an amended petition for a writ of error. Petition denied.

Bond & Bruce, of Wise, for petitioner.

The Attorney General, for the Commonwealth.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.